

**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**JOHN BARNHARDT, ET AL.**

**PLAINTIFFS**

**AND**

**UNITED STATES OF AMERICA**

**PLAINTIFF INTERVENOR**

**V.**

**CIVIL ACTION NO. 4:65-CV-01300-HTW-LRA**

**MERIDIAN MUNICIPAL SEPARATE  
SCHOOL DISTRICT, ET AL.**

**DEFENDANTS**

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**Reply of the Meridian Public School District in Support of  
its Motion to Deem its Motion for Unitary Status as Confessed**

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In response to the District's Motion to Deem its Motion for Unitary Status as Confessed, the United States, ("DOJ"), offers no substantive reason justifying its refusal to comply with this Court's scheduling order and provide the District with its objections, if any, to the motion for unitary status.<sup>1</sup>

1. The District submitted its motion for unitary status on March 29, 2018. [53]. The DOJ has never responded to the District's motion. Now, 326 days later, the DOJ has still not responded. The DOJ offers as its only excuse that it "joined" a motion for extension of the discovery deadline and deadline to submit objections to the motion for unitary status filed by the Private Plaintiffs on November 16, 2018. [119]. But the DOJ never officially joined the Private Plaintiffs' motion with any pleading of its own.<sup>2</sup> More importantly, this Court specifically denied the Private Plaintiffs' motion on December 18, 2018. To date, the

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<sup>1</sup> The Private Plaintiffs also responded to the District's Motion to Deem its Motion for Unitary Status as Confessed, although the motion is not directed towards the Private Plaintiffs. [144]. The District's reply is to both the Private Plaintiffs' and the DOJ's responses to its motion.

<sup>2</sup> On February 5, 2019, the DOJ filed its Supplemental Motion to Join the Private Plaintiffs' Motion to Extend Discovery Deadline. [150]. The District responded in objection to the DOJ's motion on February 7, 2019. [151]. The Court has not ruled on the DOJ's motion.

DOJ has submitted neither a response to the motion for unitary status, nor a motion to excuse it from doing so.

2. The DOJ claims it is automatically excused from responding to the District's motion for unitary status, because there are discovery disputes between the District and the Private Plaintiffs still pending before the Court. But the discovery at issue is unrelated to the *Green* factors or the 2013 Consent Order regarding discipline. Nowhere in the DOJ's response does it explain how it has been precluded from responding to the District's motion for unitary status with respect to its transportation system, its facilities, its extracurricular activities, any other *Green* factor, or discipline under the 2013 Consent Order.

3. The DOJ's argument that it cannot respond to the District's motion because of the outstanding discovery dispute between the District and the Private Plaintiffs is disingenuous, because as long as the District remains under its desegregation orders it has a continuing obligation to provide certain information to the opposing parties. By this logic, the DOJ would never be required to respond to the District's motion, because the various bi-annual reports and supplements would constitute on-going discoverable information.

4. The District does not contend that the 1974 Order precluded the DOJ from participating in this case. In fact, the District has never offered that argument, and its conduct—as the DOJ recognizes—shows that the District recognizes the DOJ as an active party in the case. The District's point is that the 1974 Order found the District was being operated as a unitary system with respect to the *Green* factors. The DOJ has not shown how the 1974 finding is no longer true. In fact, since 1974 the DOJ has never sought to reopen this case for good cause shown or presented any motion for further relief.

5. The District does not seek to prevent the DOJ from carrying out its constitutional obligations and has repeatedly sought to learn of the DOJ's position with respect to the *Green* factors and the 2013 Consent Order. The DOJ's continued refusal to take a position on the District's motion for unitary cannot be maintained in good faith.

Respectfully submitted, this 18th day of February, 2019.

**MERIDIAN PUBLIC SCHOOL DISTRICT**

/s/ John S. Hooks

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**CERTIFICATE OF SERVICE**

I do hereby certify that on this date, I filed electronically a true and correct copy of the foregoing with the Clerk of this Court using the CM/ECF system which caused notice to be served on all registered counsel of record.

Dated: February 18, 2019.

/s/ John S. Hooks